New Nouveau
Brunswick
CANADA

INTERGOVERNMENTAL AGREEMENT

ON

GOVERNMENT PROCUREMENT

APRIL 1992

Economic Development and Tourism

Développement économique et Tourisme

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H I G H L I G H T S

The Intergovernmental Agreement on Government Procurement provides open tendering of government goods procurement contracts valued at $25,000 or more.

All Governments will fully implement this Agreement by April 1, 1992.

The objective of the Agreement is to ensure geographic neutrality in government purchasing practices. It will eliminate preferential purchasing practices such as:

- restrictions of tendering to provincially-based companies (local presence requirements);
- restrictions of tendering to companies able to produce goods provincially or with provincially-produced material (local content requirements);
- allowing higher bids from in-province suppliers than from out-of-province suppliers (local payment preferences); and
- discounting the value of in-province bids in the bid evaluation process (local value preferences).

The Agreement provides governments with an adjustment period, where necessary. Temporary exemptions are permitted for:

- tendering for economic development purposes until March 31, 1994; and
- specified existing policies, contracts and agreements until January 1, 1996; and

The Yukon and the Northwest Territories have an exemption for northern development purposes.

Federal government procurement relating to national industrial and regional development, national defence, safety and security are also excluded from the Agreement.

The Agreement sets up an open and transparent dispute settlement process. Businesses will have direct access to the process. Each government has a focal point for complaints.

Governments will report annually to the Committee of Ministers on Internal Trade.

Governments will start discussions to extend the Agreement to include services and construction within one year.

D I S P U T E S E T T L E M E N T

The Intergovernmental Agreement on Government Procurement sets up an accessible and transparent dispute settlement process. Each government has established a focal point to receive complaints. The list is attached.

How to Make a Complaint

First Level Complaint: Direct Contact with Government Concerned

A business with a complaint should try to resolve the problem directly with the government concerned. This can be done by contacting the identified government focal point. The government concerned will then investigate the complaint, and should respond directly to the complainant with 5 working days.

Second Level Complaint: Intervention by Home Government

If the business is unsuccessful in resolving the complaint directly with the government concerned within 5 working days, the complainant can request its home province or territory to intervene to seek corrective action. To do this, the complainant should contact the government focal point in the province or territory of business. The home government will then initiate discussions to resolve the dispute. The government concerned should respond within 10 days.

Third Level Formal Complaint: Impartial Review by Experts

If a complaint cannot be resolved informally, the business can raise the problem as a formal complaint. The case will then be considered by a competent and impartial body of experts within established timeframes.

Public Reporting

A report will be published annually by the Committee of Ministers on Internal Trade by the end of the calendar year.

Further Information

Further details can be obtained from government focal points.

INTERGOVERNMENTAL AGREEMENT ON GOVERNMENT PROCUREMENT

Preamble

WHEREAS the governments participating in this Agreement wish to:

- reaffirm the principles set out in the Intergovernmental Position Paper on Regional Development of June 1985 and, in particular, the view that, as a general rule, increased interprovincial trade will lead to productivity improvements and enhanced economic activity in Canada;

- recognize at the same time the special development needs of certain regions and sectors of the economy;

- note the decision by First Ministers at their November 1987 annual conference to establish the Committee of Ministers on Internal Trade, thereby reaffirming and giving further direction to the initiative to reduce barriers to interprovincial trade;

- restate their commitment to promote opportunities for enhanced liberalization of procurement policies with the reduction or removal of barriers to trade between provinces; and

- reaffirm their commitment to the Common Procurement Principles in Support of Geographic Neutrality (annexed) set out in the Report on Public Sector Procurement Initiatives approved by First Ministers in November 1987,

NOW THEREFORE, governments participating in this Agreement have accepted the following, which shall be known as the Intergovernmental Agreement on Government Procurement. The Northwest Territories and Yukon Territory indicated that they also wish to adhere to this Agreement on the basis set out in paragraph 15(3).

Subject Matter of Agreement

1. All forms of discrimination based on the province of origin of goods or suppliers of goods covered by this Agreement shall be eliminated from the procurement practices of participating governments, except as otherwise stated in this Agreement. The discriminatory practices that shall be eliminated include but are not limited to the following:

   (a) registration requirements and restrictions on invitations to tender based upon the location of a supplier's head office, manufacturing plant or like criteria and, generally, qualification procedures

which discriminate between suppliers by province of origin;

(b) the biasing of specifications in favour of or against particular companies' products or products from a particular region, for the purpose of circumventing this Agreement;

(c) the timing of contract opening and closing so as to prevent qualified Canadian sources from developing proposals and submitting compliant bids;

(d) the specification of quantities and delivery schedules of a scale and frequency which may reasonably be judged as deliberately designed to prevent qualified Canadian sources from meeting requirements;

(e) the division of required quantities in a way designed to circumvent the Agreement;

(f) consideration of provincial content or employment in the evaluation of bids;

(g) price discounts to give preference to local suppliers;

(h) preference of any kind to selected bids after bids have been submitted and without notice of the intended preference in the request for tender documents; and

(i) the unjustifiable exclusion of a qualified supplier from eligibility to tender on a contract.

2. It is agreed that, besides price, government procurement practices may still take into account the following: quality, quantity, delivery and servicing capabilities.

Definitions

3. For the purpose of this Agreement:

(a) the term "procurement" is restricted to procurement of goods and means the purchase, lease and rental of goods, and does not include the purchase of alcoholic beverages by government departments or agencies for resale;

(b) "qualified supplier" means a supplier that is capable of fulfilling the procurement under consideration based on an assessment of its financial, technical and commercial capacity, regardless of whether the qualification process involves the use of source lists;

(c) "Committee of Ministers on Internal Trade" means the Committee of Ministers on Internal Trade established by First Ministers at their November 1987 annual conference; and

(d) "participating government" means a government that has signed this Agreement.

Scope

4. (1) (i) This Agreement is intended to remove barriers to internal trade by making procurement activities by governments in Canada open and fair. Therefore, the participating governments have agreed to give this Agreement the following scope: this Agreement shall apply to procurement contracts of a value of $25,000 or more that may be awarded by or for one or more departments of the participating governments. Crown corporations are excluded from this Agreement, except to the extent that they act on behalf of government departments in the procurement process.

(ii) Starting April 1992, the $25,000 threshold referred to in paragraph (i) above will be increased on April 1 each year, by an amount reflecting, to the nearest thousand dollars, the annual rate of increase of the consumer price index in the previous calendar year.

(2) Any participating government may exclude a particular procurement from this Agreement for economic development purposes, subject to articles 5 and 6.

(3) Any participating government may continue existing policies, contracts or purchasing agreements inconsistent with this Agreement, and in place as of January 31, 1990. Participating governments will identify these policies, contracts or purchasing agreements in writing to other participating governments before this Agreement comes into effect, and will not continue these policies, contracts or

purchasing agreements beyond January 1, 1996. Procurement contracts that result from these policies, contracts or purchasing agreements will be reported as exceptions in accordance with article 5.

Reporting of Exceptions

5. (1) Participating governments shall report annually to the Committee of Ministers on Internal Trade any exceptions made by them pursuant to paragraphs 4(2) and 4(3).

(2) The annual report of each participating provincial and territorial government shall contain the following information: the total annual value of procurement; the total annual value of procurement contracts exceeding the threshold set in accordance with article 4(1)(ii); the total annual value of contracts exceeding the threshold set in accordance with article 4(1)(ii) which constitute exceptions to this Agreement; and, in respect of each exception, a description of the procurement contract; the reasons for the exception; the recipient of the contract; the date of award; and the total value of the contract. In the event that Quebec participates in this Agreement, it will report the total value of contracts under its information technology economic partnership policy, but need not report specific contracts that result from this policy.

(3) (i) Should the federal government participate in this Agreement, its annual report to the Committee of Ministers on Internal Trade shall contain the following information: the total annual value of procurement, the total annual value of procurement contracts exceeding the threshold set in accordance with article 4(1)(ii), the total annual value of exceptions from the Agreement of contracts exceeding the threshold set in accordance with article 4(1)(ii), and a summary of the exceptions referred to in paragraphs 4(2) and 4(3).

(ii) Further to article 5(3)(i), the federal government shall, upon request, make available in respect of each exception the other information referred to in paragraph (2) of this article.

Removal of Procurement Preferences

6. (1) Participating governments shall put in place 100 percent national open tendering procedures for all procurement contracts covered by this Agreement through the elimination of the exceptions referred to in paragraph 4(2) by April 1, 1994.

(2) The target and progress towards the target of 100 percent national open tendering procedures by April 1, 1994, referred to in paragraph (1) of this article, shall be reviewed annually by the Committee of Ministers on Internal Trade.

Open Tendering Procedures

7. (1) Contracts referred to in paragraph 4(1) shall be subject to open tender on the basis of the Common Procurement Principles in Support of Geographic Neutrality set out in the Annex. "Open tendering procedures", for the purposes of this Agreement, means competitive procedures, used for soliciting bids exceeding the threshold set in accordance with article 4(1)(ii), that respect the principles of openness, fairness and accessibility.

(2) Each participating government shall disclose, in an appropriate form available to suppliers, its tendering policies, procedures and practices and identify the publication referred to in sub-paragraph 8(2)(a).

(3) Tendering procedures shall be considered to be open if the conditions set forth in paragraphs 8(1) and (2) are met.

8. (1) In order to ensure that source lists are accessible to qualified suppliers, participating governments shall respect the following requirements:

(a) conditions for inclusion of suppliers on source lists shall respect the principles of fairness and non-discrimination. Selection of suppliers among those listed shall also respect the principles of fairness and non-discrimination;

(b) semi-annual public invitations to register on source lists, including procedures for registration, shall be advertised in the publication referred to in sub-paragraph

8(2)(a). Participating governments may add qualified suppliers to source lists at any time; and

(c) when contracts are awarded through the use of source lists, governments, upon request, shall notify participating bidders of the identity of the recipient of the contract and the total value of the contract.

(2) Where a source list is not used, participating governments shall comply with the following procedural requirements:

(a) each government shall designate an easily accessible publication which shall be used for the publication of notices referred to in sub-paragraph 8(2)(b);

(b) an invitation to participate in a procurement shall be issued through a notice in such publication;

(c) the notice of a proposed purchase shall provide for time limits that are consistent with paragraph 1(c) of this Agreement;

(d) notices referred to in sub-paragraph 8(2)(b) shall state that the procurement shall be subject to this Agreement and open to suppliers from provinces and territories whose governments participate in this Agreement; and

(e) notices shall provide the basic information about the upcoming procurement and shall designate a contact point where technical specifications or additional information may be obtained.

9. Where an exception from open tendering is made pursuant to paragraphs 4(2) and 4(3), the notices required by sub-paragraph 8(2)(b) shall specify any limitations and highlight practices that deviate from the Common Procurement Principles in Support of Geographic Neutrality and from tendering procedures specified in this Agreement.

10. The provisions of articles 7 and 8 governing open tendering procedures need not apply in the following

circumstances, provided single or sole source tendering is not used with a view to circumventing this Agreement:

(a) where the procurement relates to an unforeseeable emergency and the product cannot be obtained in time by means of an open tendering process;

(b) where the procurement relates to the protection of exclusive rights, such as patents, or where the existing equipment compels the procurement authority to purchase from the original supplier for reasons of compatibility;

(c) where the procurement relates to the products of handicapped persons, philanthropic institutions, prison labour or to employment equity programs;

(d) where the procurement is for the purpose of research and development or where it involves the production of a prototype or original development. It is understood that subsequent purchases of these products shall be subject to articles 7 and 8 governing open tendering procedures;

(e) where the procurement takes place under the terms and conditions of a contract existing when this Agreement enters into force; or

(f) where the procurement relates to national defence or the enforcement of order, safety or national security.

Application to Suppliers

11. (1) A supplier in any province or territory that is not a party to this Agreement is not covered by any of its provisions in respect of procurements of any participating province or territory.

(2) Should the federal government participate in this Agreement, provisions in respect of its procurement shall apply to suppliers of any province or territory, irrespective of the participation of individual provinces or territories.

Federal Government

12. Nothing in this Agreement shall prevent the federal government's use of procurement to pursue national industrial and regional development objectives.

Languages

13. Language requirements for the notice of proposed purchase, tenders, responses, information and registration shall be specified by the government concerned.

Complaints and Monitoring Procedures

14. (1) Representations regarding the identification of a discriminatory practice prohibited by this Agreement shall be made directly to the governments concerned with a view to resolving the matter.

(2) Each participating government shall establish a point of contact, with the authority and responsibility to investigate, to which appeals from a decision by a government pursuant to representations referred to in paragraph (1) of this article may be addressed.

(3) A participating government may make representations to another government on behalf of a complainant, within its jurisdiction, which has alleged discrimination and has had no satisfaction.

(4) If representations by, or on behalf of a complainant under paragraphs (1), (2) and (3) of this article do not resolve the complaint within a reasonable period of time, the complainant or the government in the complainant's jurisdiction may refer the complaint to an appropriate dispute settlement mechanism.

Entry Into Force

15. (1) Except for paragraph 14(4), this Agreement shall enter into force January 1, 1991, for any and all governments signing prior to that date.

(2) In respect of any government not referred to in paragraph 15(1), this Agreement shall enter into force on the date of signature by that government.

(3) When the Northwest Territories or the Yukon Territory signs this Agreement, it shall apply its provisions except that it:

(a) shall be exempt from the provisions of this Agreement for all contracts of a value exceeding the threshold set in accordance with article 4(1)(ii) which are tendered exclusively within its jurisdiction, but shall report these as exceptions pursuant to paragraph 5(2);

(b) shall apply the provisions of this Agreement to requests for tender to be supplied from other jurisdictions; and

(c) shall give advance notice in the requests for tender to be supplied from other jurisdictions if it intends to apply local preferences.

(4) Each participating government shall inform the Committee of Ministers on Internal Trade of any changes in its laws and regulations relating to the subject matter of this Agreement.

Withdrawal

16. Any participating government may withdraw from this Agreement by giving twelve months' notice in writing to the other participating governments.

Further Negotiations

17. Within twelve months from the date of entry into force of this Agreement, the participating governments shall undertake further negotiations to extend the principles of this Agreement to other procurement activities, particularly in the areas of construction and services.

ANNEX

COMMON PROCUREMENT PRINCIPLES
IN SUPPORT OF GEOGRAPHIC NEUTRALITY

To provide suppliers and the public with a greater understanding of the policies and procedures which guide government procurement and to demonstrate that all jurisdictions operate on the same basic principles, Ministers approved the following statement of principles, consistent with Canada's international trade obligations, in support of geographic neutrality.

The principles of geographic neutrality are:

1. **Access**: All qualified firms that are interested in becoming government suppliers shall be given equitable access to the contract opportunities of their governments;

2. **Competition**: Government contracting authorities shall meet their goods and services requirements through a fair acquisition process based on the highest degree of competition consistent with an efficient and cost-effective procurement system;

3. **Policies**: Government contracting policies and practices shall not impose conditions which are counter to the principles of geographic neutrality. For example, anv prescribed time limit for the submission of tenders must be adequate to permit all interested and qualified suppliers to respond, wherever they may be located; and

4. **Transparency**: Governments may wish to establish specific policies or procurement practices which are exceptions to the principles of geographic neutrality, but such policies and practices must be identified, made known and clearly identified as such.

To complement these principles, areas of acceptable deviations are recognized, as purchasing organizations have a responsibility to ensure the efficient operation of their procurement systems. The conditions under which government entities could adopt policies or practices which do not meet the principles of geographic neutrality are:

1. for minimal dollar purchases, where the cost of administering an unrestricted tendering process would exceed the value of the goods and services required or represent an incommensurate portion of the costs such that it would be prohibitive and, therefore, not in the public interest;

2. for reasons connected with the protection of exclusive rights, such as patents or copyrights, where the products can be supplied only by a particular supplier and no reasonable substitute exists;

3. for reasons of justified emergency brought about by events unforeseeable by the contracting authority or for reasons of national security; and

4. for regional development purposes, when restricted competition is used by the contracting authority with the specific objective of enhancing economic or industrial development in a particular area.

In addition, to ensure transparency and discipline, governments accept a responsibility to make public the specific policies and practices which deviate from the principles of geographic neutrality for any of the reasons outlined above.

This Agreement has been executed on behalf of participating governments as follows:

_____
Canada

Date:

_____
Ontario

Date:

_____
Quebec

Date:

_____
Nova Scotia

Date:

_____
New Brunswick

Date:

_____
Manitoba

Date:

_____
British Columbia

Date:

_____
Prince Edward Island

Date:

_____
Saskatchewan

Date:

_____
Alberta

Date:

_____
Newfoundland

Date:

_____
Yukon

Date:

_____
The Northwest Territories

Date:

INTERGOVERNMENTAL AGREEMENT ON GOVERNMENT PROCUREMENT

EXPLANATORY NOTE # 1

EXCEPTIONS & REPORTING EXCEPTIONS

INTERGOVERNMENTAL AGREEMENT ON GOVERNMENT PROCUREMENT

EXPLANATORY NOTE # 1

EXCEPTIONS & REPORTING EXCEPTIONS

This paper provides a summary of the exceptions to open tendering permitted by the **Intergovernmental Agreement on Government Procurement.** This summary is intended to clarify the terms of the Agreement.

I. TYPES OF EXCEPTIONS

1.1 **Specific Procurements** (Article 4(2))

A participating government may exclude a specific procurement action from the open tendering procedures (Articles 7 to 9 inclusive) for economic development purposes.

This exception does not apply effective April 1, 1994.

1.2 **General Policies, Contracts or Purchasing Agreements** (Article 4(3))

A participating government may also exclude from the open tendering provisions of the Agreement (Article 7 to 9) any specific procurement that is made under the terms of a **policy, contract or purchasing agreement** that:

- has been specifically **identified**, in writing, to other participating governments **before** the **Agreement** comes into force on **January 1, 1991;**
- was in **place** on **January 30, 1990;** and
- **will not be continued** effective January 1, 1996. Policies, contracts or purchasing Agreements that expire before that time may be renewed but would not operate after December 31, 1995.

This means that after December 31, 1995, participating governments would not have policies, programs contracts or purchasing agreements that would restrict open tendering in their goods procurement activities.

NOTE: The issue of industrial offsets has been reviewed and will require continuing discussion on their treatment under the Agreement.

1.3 **Special Conditions** (Article 10)

Participating governments need not apply the open tendering provisions of the Agreement (Article 7 to 9) in the case of the **special conditions** set out in Article 10. These conditions range from emergency circumstances to patent protection and the products of handicapped persons.

NOTE: **Although it is not specified in Article 5, it is assumed that participating governments would report those exceptions in accordance with Article 5(2).** If volume makes this practice onerous then governments would provide a summary report. The object is to make the Annual Report on Procurement as complete as possible.

1.4 **Federal Government** (Article 12)

Should it participate in the Agreement, the Federal Government may exclude any procurement from the open tendering provisions of the Agreement in order to meet national industrial and regional development objectives.

There is no time limit on this exception and it would continue to operate after March 31, 1994 when a similar exception for the other governments (Article 4(2)) ceases to operate.

NOTE: **Although not specifically indicated in the Agreement, the Federal Government would continue to report exceptions according to the terms of Article 5(3) as long as it makes any exceptions to the open tendering provisions of the Agreement.**

1.5 **Northwest Territories and the Yukon**

(Article 15(3))

The Yukon or Northwest Territories may restrict procurement to their own jurisdictions. If either government decides to call for tenders outside its jurisdiction, it must follow the open tendering provisions of the Agreement. The Territories may still provide preferences to suppliers within their jurisdictions when calling for tenders outside their jurisdictions. They would provide notifications of these preferences when calling for tenders and would report these exceptions as specified in Article 5(2).

There is no time limit to this exception but it is assumed that it would be reviewed by Ministers annually when participating governments report on their activities.

1.6 **Notification** (Article 9)

One of the objects of the Agreement is to make the government procurement processes accessible and unambiguous to businesses in all participating provinces and territories. Therefore, if participating governments are issuing a call for tenders that is restricted in any way from the open tendering provisions of the Agreement as a result of the application of any of the exceptions for tenders for $25,000, or more permitted by the Agreement, these limitations and the reason for them should be indicated in the request for tender documents and in the notice.

This requirement is not specified in the Agreement (Article 9 refers only to notices) but it is consistent with the intent of the Agreement and will help to reduce potential disputes.

2. REPORTING OF EXCEPTIONS (Article 5)

2.1 Each participating government must make an **Annual Report** on its goods procurement activities for the previous year. Although the timing of this report has not been specified in the Agreement, a reasonable arrangement would be to make these reports by September 1 **for the previous fiscal year ending March 31.**

2.2 Participating governments (except the Federal Government, should it participate) must identify specific procurement contracts that have been let in a way that is inconsistent with the open tendering practices set out in the Agreement whether these contracts result from the provisions of Articles 4(2) or 4(3) or within the scope of Article 10.

NOTE: Reporting of exceptions under Article 10 is not specified in the Agreement but the practice would be consistent with the intent of the Agreement.

2.3 The detail of exceptions must be provided including the description of the procurement contract, the reason for the exception, the recipient of the contract, the date of award and the total value of the contract. (Article 5(2))

2.4 The only exceptions to this requirement are, should they participate:

- the **Federal Government**, which, according to Article 5(3), need make only a summary report of exceptions but must provide the same detail as other governments on request. This exception is intended to recognize the expected substantial volume of Federal exceptions under the "Area Buy" and other programs.

- the detail of contracts under **Quebec's information technology economic partnership policy.** In the event it participates, Quebec is to report the total value of contracts under this policy.

2.5 It is assumed that Annual Reports specified in Article 5 would continue as long as the Agreement remains in force and even though exceptions to the open tendering provisions of the Agreement (Articles 4(2) & 4(3)) are no longer permitted, that is, participating governments would continue to report exceptions under Article 10 or if exceptions are made arbitrarily by participating governments (effectively in breach of the Agreement). The Agreement can only be effective if there is absolute openness and candour among the participants concerning

their procurement practices.

2.6 The exceptions requirements and the reporting of these are summarized in Tables 1 and 2 (attached).

3. REVIEW AND REPORTING TO GOVERNMENTS

3.1 There are no specific provisions for the regular review of the effectiveness of the Agreement other than that specified in Article 6(2) which calls for an annual review of " ... the target (specified in Article 6(1)) and the progress toward the target of 100 per cent national open tendering procedures...". It is assumed, however, that the performance and effectiveness of the Agreement would be scrutinized on an ongoing basis.

3.2 A convenient time for review by participating Ministers could be on or about September of each year. At that time participating Ministers could consider

- annual reports of procurement activity and exceptions from each participant for the previous fiscal year ending March 31, and

- annual reports on disputes concerning the application of the Agreement that have arisen to the end of the same fiscal year.

Based on this and other information, the members of the Committee of Ministers who are participating in the Agreement would report to their First Ministers concerning the performance of the Agreement and any changes to the Agreement or the practices in the application of the Agreement that might be considered necessary. This report would be made regularly in October each year.

Table 1. Reporting of Exceptions under the Intergovernmental Agreement on Government Procurement

Types of Exception	Timing of Policies, Contracts, or Purchasing Agreements for Exception	Removal Deadline	Reporting Format
Exceptions to the open tendering provision			
1. Specific procurement contracts			
•Article 4(2) for Provincial and Territorial Governments	May be in place on or after January 31, 1990	April 1, 1994	See column A of Table 2
2. General policies, contracts or purchasing agreements			
•Article 4(3) for Provincial and Territorial Governments	Must be in place on January 31, 1990	January 1, 1996	See column A of Table 2
•Article 5(2) for Quebec's information technology economic partnership policy	Must be in place on January 31, 1990	January 1, 1996	See column B of Table 2
•Articles 4(2), 4(3) and 12 for the Federal Government	May be in place on or after January 31, 1990	Not applicable	See column C of Table 2
3. Special conditions (article 10)	Not applicable	Not applicable	See column B of Table 2
4. Federal Government	Not applicable	Not applicable	See column C of Table 2
5. Territories	Not applicable	Not applicable	See column B of Table 2

Table 2. Reporting Requirements of Exceptions

Column A

for articles 4(2) and 4(3)

* The total annual value of procurement
* The total annual value of procurement exceeding the threshold ($25,000 adjusted for Consumer Price Index)
* The total annual value of procurement exceeding the threshold ($25,000 adjusted for Consumer Price Index) which constitute exceptions to this agreement
* For each specific exception:
  - description
  - reasons for exception
  - recipient of the contract
  - date of award
  - total value of the contract

Column B

for articles 5(2) (Quebec) and 12

* The total annual value of procurement
* The total annual value of procurement exceeding the threshold ($25,000 adjusted for Consumer Price Index)
* The total annual value of procurement exceeding the threshold ($25,000 adjusted for Consumer Price Index) which constitute exceptions to this agreement
* A summary of the exceptions

Column C

for article 5(3)

* Summary report on exceptions
* Specific Additional information from column A or B on a request basis only

INTERGOVERNMENTAL AGREEMENT ON GOVERNMENT PROCUREMENT

EXPLANATORY NOTE #2

EXCEPTIONS TO ARTICLE 4 (3)

INTERGOVERNMENTAL AGREEMENT ON GOVERNMENT PROCUREMENT

EXPLANATORY NOTE #2

EXCEPTIONS TO ARTICLE 4 (3)

This paper is intended to identify exceptions to Article 4 (3) of the Agreement proposed by individual provincial and territorial governments. It is to be read in conjunction with Explanatory Note #1, "Exceptions and Reporting Exceptions".

NEWFOUNDLAND

Newfoundland will require an exception for its Provincial Preference Policy. The exception will be required for the full period permitted for exceptions (i.e. to January 1, 1996).

NOVA SCOTIA

No product exceptions under Article 4(3) of the Agreement.

In addition, the Maritime Procurement Agreement may apply for goods purchased for the period ending January 1, 1996. This exception will be subject to annual review by Nova Scotia commencing January 1, 1992 to determine the potential application of Article 4(3) in each subsequent year up to December 31, 1995.

PRINCE EDWARD ISLAND

Prince Edward Island has indicated a requirement for an exception on behalf of highway paints and culverts and guardrails.

NEW BRUNSWICK

No product exceptions under Article 4(3) of the Agreement. It is, however, intended that the Maritime Procurement Agreement, as it relates to goods will be reviewed by April 1, 1993 to determine if any exceptions are required from then until January 1, 1996.

QUEBEC

Quebec has indicated, as per Article 5(2) of the Agreement, an exception on behalf of its information technology economic partnership policy.

ONTARIO

No product exceptions under Article 4(3) of the Agreement.

MANITOBA

No product exceptions under Article 4(3) of the Agreement.

SASKATCHEWAN

Saskatchewan has indicated, pursuant to Article 4(3) of the Agreement, exceptions for the following items:

Product	Projected Annual Value ($million)	Comments
Fuel and Lubricants (Federated Co-operatives Ltd., Regina (southern Saskatchewan fuels))	2.5	The Saskatchewan government and Federated Co-operatives are involved in a joint venture with the heavy oil upgrader project. To enhance the viability of the upgrader, an agreement has been made to purchase fuel on a long term contract that will not run beyond 1995. Fuel purchases for government use in northern Saskatchewan are not included in this arrangement.

Asphalt and Asphalt Cement (Husky Marketing, Regina Moose Jaw Asphalt, Ltd., Moose Jaw	6.7	Until two years ago, out-of-province firms were excluded from the Saskatchewan asphalt market. Saskatchewan firms were concerned about predatory pricing by large firms such as ESSO. A tacit agreement was struck allowing provincial companies to become established by stating on tender invitations that the government may exclude the procurement for economic development purposes. Now, provincial firms are becoming established as viable competitors to larger firms and are competing for projects on a better footing. Esso has been sharing the provincial market with Saskatchewan firms. It is expected that this exception not extend beyond 1991.
Office Furniture (Saskatchewan manufacturers of office furniture (six firms)	$.75 estimated	The Saskatchewan office industry manufacturing industry is still in the infancy stage. The industry has grown to supply 40 percent of the province's office supply 40 percent of the province's office furniture needs since its birth in 1984. However, private sector markets require cultivating. In order to accomplish this task, the government of Saskatchewan will, for two years, continue to invite tenders with the provision that the government may exclude the procurement for economic development purposes.

Glass Beads (Canasphere Industries Ltd., Moose Jaw	$.4	The company is a subsidiary of an Alberta firm. It established a plan in Saskatchewan to serve the provincial market. It is the sole provincial source of glass beads for use in highway traffic paint.

ALBERTA

No product exceptions under Article 4(3) of the Agreement.

BRITISH COLUMBIA

No product exceptions under Article 4(3) of the Agreement.

NORTHWEST TERRITORIES

Except for the reporting of exemptions required under paragraph 5(2), the Agreement shall not apply to Government of Northwest Territories (GNWT) contracts exceeding the threshold set in paragraph 4(1)(ii), when these contracts are tendered exclusively in the Northwest Territories (NWT). Furthermore, the Agreement shall apply to GNWT contracts are tendered outside the NWT: but if it intends to give preference to NWT suppliers, the GNWT agrees to give prior notice in the tender documentation. This provision is consistent with paragraph 14(3)(c) of the Agreement. The GNWT equally understands that these provisions are not time limited by the deadlines provided in paragraph 4(3) of the Agreement.

YUKON

The Yukon Government as per Article 14.(3) is exempt from the requirement under Article 4.(3) to discontinue all policies, contracts or purchasing agreements inconsistent with the Agreement beyond August 1, 1995. However, as is required under Article 4.(3), the Yukon Government identifies the following policy as inconsistent with the Agreement:

Yukon Business Incentive Policy

The Yukon Business Incentive Policy is based on a system of rebates paid to contractors for using local labour and specific locally manufactured materials in carrying out government contracts. This policy has no impact on the tendering and bid award process.

The Yukon Government agrees that any procurement contracts that result from these policies, contracts or purchasing agreements will be reported as exceptions in accordance with Article 5.

INTERGOVERNMENTAL AGREEMENT ON GOVERNMENT PROCUREMENT

EXPLANATORY NOTE #3

DISPUTE SETTLEMENT MECHANISM FOR COMPLAINTS THAT CANNOT BE RESOLVED THROUGH CONSULTATION AMONG GOVERNMENTS

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The following procedures are established to satisfy the requirements of section 14(4) of the Intergovernmental Agreement.

BACKGROUND

- Section 14 provides that complaints by suppliers should be resolved by representations to procuring governments:

  (1) First, directly by a supplier and, if this is unsuccessful (section 14(1));

  (2) By a government on behalf of a complainant within its jurisdiction (section 14(3)).

- If these representations are unsuccessful within a reasonable period which, for the purposes of this Agreement, is **20 working days from the time the first formal representation is made by the complainant to the procuring government**, then the complainant, or the government for the jurisdiction in which the complainant is located, may request that the complaint be considered by a dispute settlement mechanism (section 14(4)).

THE MECHANISM*

1. **Federal Government**

   1.1 Following attempts to resolve complaints as set in sections 14(1) and 14(3) of the Agreement, complaints concerning federal procurement actions covered by this

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* **The mechanism described in this paper is consistent with the paper on Dispute Settlement: Modalities dated January 7, 1991 referred to in Mr. Filmon's letter to Mr. Bourassa, on behalf of other Premiers, dated August 28, 1991 and Mr. Bourassa's response dated October 2, 1991.**

Agreement would be made directly to a bid protest mechanism as prescribed (to be prescribed) by the federal government.

2. **Provincial/Territorial Governments**

2.1 The procedure for Provincial/Territorial governments as described in this paper will apply.

3. **Dispute Settlement Options**

3.1 Complaints arising among the Maritime Provinces (New Brunswick, Nova Scotia, Prince Edward Island) concerning procurement actions covered by this Agreement may be resolved through the bid protest procedures established by the **Memorandum of Agreement re Reduction of Interprovincial Trade Barriers: Government Procurement**.

3.2 The Western provinces retain the option to use the procedures now established under their regional agreement.

3.3 Complaints may also be resolved through the procedures for other governments described in this paper by mutual agreement between the governments affected.

4. **Other Governments**

Standing Rosters of Panel Members

4.1 Governments applying these procedures agree to establish a standing roster of an appropriate number of competent and impartial people who will be available to serve on expert panels to resolve complaints. These rosters will be made available to other governments participating in the Agreement.

Making Complaints

4.2 Complaints will be lodged through the official point of contact (section 14(2)) of the government representing the complainant to the official point of contact for the procuring government once the processes to resolve complaints (section 14(1) and 14(3)) have failed.

Establishing the Panel

4.3 The official points of contact of the two governments will agree on an **expert panel** from standing rosters within five (5) working days of the complaint being formally lodged by the official point of contact for the complainant's government.

4.4 The **expert panel** may be constituted in any way that is acceptable to the two governments involved. In establishing the panel, however, governments accept the principle that the panel should be fair and balanced and that the complaining supplier should feel that:

- the complaint has been fairly, reasonably and objectively considered by recognized experts;
- there will be no future consequences to the suppliers' business interests as a result of the complaint.

4.5 Generally speaking, therefore, the **expert panel** would consist of a maximum of three members, two selected from the rosters of the two governments involved and a Chair, agreeable to both governments.

Processing Complaints

4.6 The panel will begin consideration of a complaint within ten (10) days of the formal complaint being registered.

4.7 The panel will first consider if the complaint has sufficient substance to be considered and will make this determination within fifteen (15) days of the formal complaint being registered.

4.8 If the panel agrees to consider a complaint they will complete their work within forty-five (45) days of the formal complaint being registered. Upon formal request the extension for extra ordinary circumstances may be granted with full notification to all parties.

4.9 Procedural guidelines will be established appropriate to each case. The official points of contact for the provinces concerned will agree on providing secretariat and research support to the panel and will maintain the necessary records.

4.10 The incremental and out-of-pocket costs of the panel will be shared equally between the two governments involved.

Consultation

4.11 The panel's final report will be provided to the complainant and the governments involved in the complaint undertake to consult each other and the complainant concerning the panel's findings with the object of reaching a mutually acceptable accommodation based on the panel's report.

4.12 The official points of contact from the provinces concerned would append a description of the accommodation, or the different positions if there is none, to the report. The report would be considered **complete and final** at this stage. Governments agree to complete these steps within ten (10) days of receipt of the panel's report.

5. Sanctions

5.1 If a government feels, as a result of a panel's report and subsequent consultations, or another series of similar unresolved complaints, that a government is not complying with the terms of the Agreement then a participating government may suspend the application of equivalent benefits made under the Agreement to the non-complying government and its resident suppliers.

5.2 An indication of the withdrawal of equivalent benefits will be made in writing to the non-complying government with copies to other participating governments. The government taking the action agrees to delay implementing the action for sixty (60) days from the time the complaint is made to allow for further consultation among participating governments to permit a possible resolution of issues.

6. Reporting

6.1 The official point of contact of the government making the complaint will provide a copy of the final report (paragraph 3.12 of this paper) to all implementing governments.

6.2 The official point of contact for each participating government will keep a record of

- all complaints received directly from suppliers and the number resolved (section 14(1) complaints);
- all complaints made by other governments on behalf of suppliers and the number resolved (section 14(3) complaints);
- complaints made to panels and not considered as substantial.

This information will be compiled into a report by each point of contact for each fiscal year and forwarded to other participating governments within **three (3)** months of the end of the fiscal year.

6.3 The Secretariat to the Committee of Ministers on Internal Trade, or a provincial government that has accepted the responsibility, will prepare an annual report summarizing information concerning complaints for each government participating in the Agreement;

- the results of panel considerations (paragraph 5.1 of this paper);
- the complaints received and resolved by other means (paragraph 5.2 of this paper).

This report will be circulated to governments through the Committee of Ministers on Internal Trade by October 1 each year and will be published in a timely fashion, prior to the start of the next fiscal year.

7. Evaluation

7.1 Governments agree to evaluate the effectiveness of this approach to dealing with complaints and bid protests under the Agreement by April 1, 1996.

As part of the annual reporting process, governments agree to review the effectiveness of this approach to dealing with complaints and bid protests under the Agreement.

INTERGOVERNMENTAL AGREEMENT ON GOVERNMENT PROCUREMENT

EXPLANATORY NOTE #4

REPORTING REQUIREMENTS

REPORTING REQUIREMENTS

1. Systems to collect and maintain information to allow the Task Force to report annually to the Committee of Ministers on Internal Trade any exceptions made by them pursuant to paragraphs 4(2) and 4(3) of the Agreement, including:

   - the total annual value of procurement;
   - the total annual value of procurement contracts exceeding the threshold set in accordance with article 4 (1) (ii);
   - the total annual value of procurement contracts exceeding the threshold set in accordance with article 4(1) (ii) that constitutes exceptions to this Agreement; and
   - in respect of each exception, a description of the procurement contract; the reasons for the exception; the recipient of the contract; the date of the award; and the total value of the contract.

(Note: Quebec's report will contain the total value of contracts under its information technology economic partnership policy, but need not report specific contracts that result from this policy.

2. **The Federal Government's report will contain the following information:**

   - the total value of procurement contracts exceeding the threshold set in accordance with article 4(1)(ii) of the Agreement; and
   - the total annual value of exceptions from the Agreement of contracts exceeding the threshold set in accordance with article 4(1)(ii) of the Agreement, and
   - a summary of the exceptions referred to in paragraphs 4(2) and 4(3) of the Agreement.

3. **The Federal government would, upon request, also make available in respect of each exception the other information referred to in paragraph 5(2) of the Agreement and listed above in paragraph 2 of this paper.**

4. The Report may also include additional information on such aspects of the first year of operation as:

- experience with compliance by jurisdictions with (PRB/Committee of Experts) opinions and recommendations
- user (complaints/governments) satisfaction, transparency, follow-up re recommendations, etc.
- recommendations for the next (two) years

5. Participating governments shall report annually on progress toward the target of 100 percent national open tendering procedures by April 1, 1994, referred to in paragraph 5(1) of the Agreement.

- Annual reports will be prepared for submission to Ministers at their annual meeting of Internal Trade
- Reports will be submitted through a coordinating mechanism

6. <u>Threshold</u>

- **The Agreement provides that the threshold will be adjusted annually (par. 4(1)(ii). A mechanism or procedures for determining new threshold values is required.**

NEW BRUNSWICK

GOVERNMENT DEPARTMENTS AND AGENCIES

covered by the

INTERGOVERNMENTAL AGREEMENT ON GOVERNMENT PROCUREMENT

Dept. of Advanced Education & Labour
Dept. of Agriculture
Dept. of Economic Development & Tourism
Dept. of Education
Dept. of Environment
Dept. of Finance and Board of Management
Dept. of Fisheries & Aquaculture
Dept. of Health & Community Services
Dept. of Income Assistance
Dept. of Intergovernmental Affairs
Dept. of Justice, Attorney General
Dept. of Municipalities, Culture and Housing
Dept. of Natural Resources & Energy
Dept. of Supply & Services
Dept. of Solicitor General
Dept. of Transportation
Office of the Auditor General
Office of the Comptroller
Office of the Lieutenant-Governor
Office of the Leader of the Opposition
Office of the Ombudsman
Office of Premier
Policy Secretariat
Legislative Assembly
Executive Council Office
N.B, Police Commission
Civil Service Commission
Regional Development Corporation
New Brunswick Health and Safety Commission
Alcoholism & drug Dependency Commission of New Brunswick

GOVERNMENT CONTACTS

Governments have designated focal points to respond to inquiries regarding the Intergovernmental Agreement on Government Procurement and to receive and investigate complaints under the Agreement. Questions should be addressed to:

CANADA

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